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5 Attorneys for Defendants
6 MHR LEWIS (US) LLC, PATRICK J.
MCHUGH, and ERIK A. BERGMAN

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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

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11 DAVID L. BONUCCELLI and DAVID L.
BONUCCELLI & ASSOCIATES, INC.,

12 *Plaintiffs*

13
14 v.

15 MHR LEWIS (US) LLC, a law firm;
PATRICK J. MCHUGH, an individual; ERIK
16 A. BERMAN, an individual;

17 *Defendants.*

Case No: 2:20-cv-01553-KJM-CKD

**STIPULATION AND ORDER TO
EXTEND TIME FOR DEFENDANTS'
RESPONSIVE PLEADING**

Date:
Time:
Dept. Courtroom 3, 15th Floor
Judge: Kimberly J. Mueller

Complaint Filed: 08/03/20
Trial Date: Not Set

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 WHEREAS, Plaintiffs DAVID L. BONUCCELLI and DAVID L. BONUCCELLI &
3 ASSOCIATES, INC. (“**Plaintiffs**”) filed their Complaint (Dkt. No. 1) on August 3, 2020 and
4 thereafter served the Complaint;

5 WHEREAS, Defendants MHR LEWIS (US) LLC, PATRICK J. MCHUGH, and ERIK A.
6 BERGMAN (collectively “**Defendants**”) by and through their attorneys of record signed and returned
7 Waivers of Service of Summons on September 2, 2020;

8 WHEREAS, the Complaint alleges, among other things, legal malpractice against Plaintiffs’
9 former lawyers, the Defendants. The law firm of MHR Lewis (US) LLC was retained by Plaintiffs
10 with respect to Plaintiffs’ claim for money allegedly owed by third-party 3650 REIT HOLDING
11 COMPANY LLC, a Delaware limited liability company (“3650 REIT”). Defendants dispute any
12 wrongdoing;

13 WHEREAS, the Complaint relates to two pending actions in the Sacramento County Superior
14 Court (*3650 REIT Holding Company, LLC v. David L. Bonuccelli & Associates, et al.*, Case No. 34-
15 2020-00277329 (the “3650 REIT Action”), and *David Bonuccelli, et al. v 3650 REIT et al.*, Case No.
16 34-2020-00277415 (the “Bonuccelli State Action”) (collectively, the “State Court Actions”);

17 WHEREAS, Plaintiffs are represented by Gavrilov & Brooks in the Complaint and in the State
18 Court Actions;

19 WHEREAS, the Sacramento County Superior Court recently overruled and denied, respectively,
20 a Demurrer and Motion to Strike by Bonuccelli as to 3650 REIT’s First Amended Complaint in the
21 3650 REIT Action, but the time for Bonuccelli to Answer has not yet expired;

22 WHEREAS, 3650 REIT recently filed a Demurrer to Bonuccelli’s First Amended Complaint in
23 the Bonuccelli State Action. The 3650 REIT Demurrer will be heard on November 24, 2020;

24 WHEREAS, Defendants and Plaintiffs have begun, but have not completed, meet and confer
25 efforts respecting a Motion to Dismiss under Federal Rules of Civil Procedure, Rule 12(b)(6), against
26 all claims for failure to state a claim upon which relief can be granted; or, alternatively, a Motion to
27 Stay Proceedings. Defendants contend, and Plaintiffs are evaluating but currently dispute, that the
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1 Complaint fails to plead a causal connection between the alleged breach of professional duty and
2 resulting harm because of, in part, the State Court Actions. In the alternative, Defendants contend, and
3 Plaintiffs are evaluating but currently dispute, that Defendants will be irreparably harmed if the
4 Complaint is not stayed pending resolution of or further proceedings in the State Court Actions;

5 WHEREAS, Defendants' responsive pleading is currently due on October 5, 2020;

6 WHEREAS, there has been no prior extensions granted in this action;

7 WHEREAS, the Initial Scheduling Conference is set for December 3, 2020; and

8 WHEREAS, the granting of an extension of time for Defendants to file a responsive pleading
9 will allow the parties to further their meet and confer efforts, permit additional proceedings to take
10 place in the State Court Actions which may impact the Complaint and may present an opportunity for
11 the parties to resolve some or all of the issues contemplated by Defendants' Motion to Dismiss; or,
12 alternatively, Motion to Stay.

13 **STIPULATION**

14 COMES NOW, pursuant to Local Rule 144 (Fed. R. Civ. P. 6(a)) and Judge Mueller's Order dated
15 August 3, 2020 (Dkt. No. 4-1), at ¶8, Plaintiffs and Defendants, by and through their counsel of record,
16 STIPULATE AS FOLLOWS:

- 17 1. Defendants may have up to and including November 2, 2020 to file and serve a responsive
18 pleading to the Complaint; and

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2. That, by entering this Stipulation, the Parties do not admit any factual allegation or legal conclusion and do not waive any rights, defenses, affirmative defenses, or objections, including personal jurisdiction, insufficient process, or insufficient service of process.

IT IS SO STIPULATED.

DATED: October 7, 2020

D'AMATO LAW CORPORATION

By /s/ Thomas J. D'Amato
Thomas J. D'Amato
Attorneys for Defendants
MHR LEWIS (US) LLC, PATRICK J. MCHUGH,
and ERIK A. BERGMAN

DATED: October 7, 2020

GAVRILOV & BROOKS

By /s/ Gregory O'Dea
Gregory O'Dea, SBN 110966
Attorneys for Plaintiffs
DAVID L. BONUCCELLI and DAVID L.
BONUCCELLI & ASSOCIATES, INC.

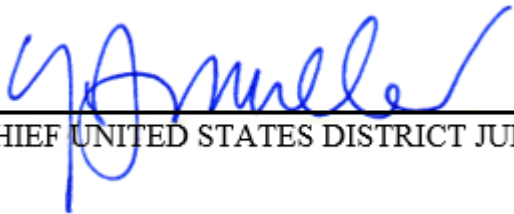
ORDER

PURSUANT TO STIPULATION AND FOR GOOD CAUSE SHOWN, IT IS SO ORDERED:

1. Defendants may have up to and including November 2, 2020 to file and serve a responsive pleading to the Complaint; and
2. By entering their Stipulation, the Parties have not admitted any factual allegation or legal conclusion and have not waived any rights, defenses, affirmative defenses, or objections, including personal jurisdiction, insufficient process, or insufficient service of process.

IT IS SO ORDERED:

DATED: October 7, 2020.


CHIEF UNITED STATES DISTRICT JUDGE